

Hylebos Waterway Natural Resource Damage Settlement Proposal and Liability Allocation

The natural resource trustees conducting the natural resource damage assessment for the Commencement Bay environment consist of the National Oceanic and Atmospheric Administration (NOAA) of the U.S. Dept. of Commerce (lead administrative trustee), the U.S. Dept. of the Interior, the Washington Dept. of Ecology (as lead state trustee, also representing the Washington Dept. of Natural Resources and Dept. of Fish and Wildlife), the Puyallup Tribe of Indians, and the Muckleshoot Indian Tribe.

Copies of the trustees' natural resource damage settlement proposal report for the Hylebos Waterway and supporting documents are available for review at two repositories:

Citizens for a Healthy Bay
917 Pacific Ave., Suite 406
Tacoma, WA 98402
Contact: Leslie Rose
Phone: 253/383-2429
Email: lrose@healthybay.org

NOAA Damage Assessment and Restoration Center NW
7600 Sand Point Way NE
Seattle, WA 98115-0070
Contact: Gail Siani
Phone: 206/526-4566
Email: Gail.E.Siani@noaa.gov

Persons wishing to review the documents are asked to phone or email in advance to make an appointment.

A copy of the report can also be downloaded at

www.darcnw.noaa.gov/hylsettl.htm

For more information contact
Robert A. Taylor
NOAA Senior Counsel for Restoration
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Trustees Propose Allocation of Natural Resource Damage Liability Among Hylebos Waterway Facilities

The Superfund law potentially makes parties who contribute contamination to an area jointly and severally liable for all the cleanup costs and natural resource damages that arise. At sites with multiple potentially responsible parties, disputes over which parties are responsible for what portion of the costs can be a stumbling block to achieving cleanup and restoration of natural resource injuries. To help reach settlement of natural resource damage claims for the Hylebos Waterway, the trustees are proposing a scheme for allocating natural resource damage liability among waterway facilities for settlement purposes.

The trustees' proposal allocates liability among facilities that contributed to Hylebos Waterway contamination. In a number of cases, more than one party may have caused or contributed to the pollution from a facility. It is for the parties who are liable for a facility to decide among themselves how to divide up the responsibility for that facility.

● Compiling Allocation Information

The trustees' allocation proposal is based upon publicly available information on site activities and permits, contaminant spills and releases and site contamination. The trustees obtained information from public files at the EPA and the Washington Department of Ecology. Some information was obtained from public libraries. The file information was reviewed and relevant data were compiled in an allocation database.

● Identifying Facilities Subject to the Allocation

Sites or facilities potentially subject to the allocation are limited to known commercial, industrial and municipal properties in the vicinity of the Hylebos Waterway and two properties along Hylebos Creek. For a site to be allocated a share of liability, it must meet three criteria: 1) There must be a pathway for contaminant releases from the site to travel to the waterway; 2) An activity must have been conducted on the site that was a likely source of a contaminant or a chemical likely to intensify the effect of a contaminant; and 3) There must be evidence that the contaminant was present on the site or was released to the waterway as a result of activities undertaken at the site.

- **Allocating Contaminant “Footprints”**

Contaminants released in one part of the Hylebos Waterway have become mixed and transported to different parts of the waterway through natural process and human activities. As a result, a location in the waterway may have pollutants from several sources. For purposes of the allocation proposal, the trustees first look for patterns or “footprints” of contamination on maps of sediment pollution that suggest a contaminant may have come from a particular source. The trustees use this approach to allocate liability for most contaminants.

- **Allocating Common Pollutants by Mass-Loading Analysis**

Two common Hylebos Waterway contaminants, polychlorinated biphenyls (PCBs) and polycyclic aromatic hydrocarbons (PAHs), are so widespread that it is not possible to allocate liability for them by using the footprint approach. The trustees assign liability for these substances through a mass-loading approach. For this analysis the waterway is divided into five segments, and the analysis is done within each segment. A portion of the contaminants released in each segment are assumed to have traveled to adjacent segments, and rules are set for allocating liability across segments. The mass-loading approach allocates liability by assigning percentage shares to sites based on a comparison of the duration and area of operations at each site associated with contaminant releases, taking into account the likelihood that the operations generated significant releases.

- **Mass-Loading Allocation of Selected Footprints**

In some areas the sediment maps appear to show a distinct contamination footprint, but one that is tied to more than one site. For these, the trustees use a hybrid approach, following the same mass-loading approach to apportion liability for the footprint among the related sites.

- **Adjusting for Prior Settlements**

The trustees have already entered into natural resource damage settlements with the Port of Tacoma and the City of Tacoma. As a result the trustees are not seeking to recover damages allocated to two facilities for which the City and/or the Port appear to be the only responsible parties.

- **Resolving Unallocated Footprints**

Applying the above approaches and the information they have obtained to date, the trustees are unable to allocate liability for some contamination footprints. Some of the unallocated footprints are not clearly adjacent to any particular site. Others appear to originate from a site but the trustees lack evidence that an activity was conducted on the site that would have resulted in the contamination. The trustees are hopeful they will receive information during the public review and comment process for the settlement proposal and allocation that will allow them to assign liability for these footprints.

Commenting on the Proposal

Comments will be accepted through close of business **May 16, 2002**. Comments should be in writing and addressed to:

Hylebos NRDA Settlement Proposal Comments
Attn: Ms. Gail Siani
NOAA Damage Assessment and Restoration
Center NW
7600 Sand Point Way NE
Seattle, WA 98115-0070
or by email to
Gail.E.Siani@noaa.gov

- **Providing Information on the Allocation Proposal**

Parties are encouraged to submit information they have that bears on the allocation of liability. Because of staff limitations, the trustees need the information to be in a manageable form to be usable. Additional information should be submitted with a statement that says where in any submitted documents the information can be found and explains how the information would affect the allocation. The trustees will review any further information received and will make whatever revisions to the allocation proposal they feel are needed. The revised allocation will be used in subsequent settlement negotiations with responsible parties.